

Robert S. Arns, (SBN 65071)
rsa@arnslaw.com
Jonathan E. Davis, (SBN 191346)
jed@arnslaw.com
Kevin M. Osborne, (SBN 261367)
kmo@arnslaw.com

THE ARNS LAW FIRM

515 Folsom Street, 3rd Floor
San Francisco, CA 94105
Tel: (415) 495-7800
Fax: (415) 495-7888

*Attorneys for Plaintiff Jonathan Jaffe,
Individually and on behalf of all others
similarly situated*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL 2672

CASE No: 3:15-md-02672-CRB (JSC)

**PLAINTIFF JONATHAN JAFFE’S
OPPOSITION TO COMPETITIVE
ENTERPRISE INSTITUTE’S MOTION
FOR ADMINISTRATIVE RELIEF TO
FILE AMICUS CURIAE BRIEF**

This Document Relates To:

ALL ACTIONS

INTRODUCTION

Plaintiff Jonathan Jaffe, through his counsel, makes this filing in opposition to the Motion for Administrative Relief for Leave to File Brief of Amicus Curiae of the Competitive Enterprise Institute's Center for Class Action Fairness ("the Motion", Docket 454) based on the appearance that the movant has received funding from Defendant Volkswagen of America. Plaintiff believes the Court's decision on this Motion and consideration of the proposed Amicus Curiae brief should be informed by an understanding of the relationship (if any) between Defendant Volkswagen of America and the Competitive Enterprise Institute's Center for Class Action Fairness ("CEI CCAF") in light of the potential for conflict. As such, Plaintiff requests the Court delay its decision until the CEI CCAF has produced a complete list of donors and donation amounts so that the Court and Plaintiff's counsel can adequately determine the extent to which conflicts of interest may exist. Without such information, Plaintiff, the putative class, and the Court are not able to fully analyze the propriety of the Motion and proposed brief.

Plaintiff believes the Court and parties should be aware of the full extent to which the Competitive Enterprise Institute ("CEI") has received funding in the past from both a defendant in this action (Volkswagen Group of America) and an industry organization that Volkswagen Group of America is a member of, namely the Alliance of Automobile Manufacturers. The CEI does not publicly disclose its complete list of donors and donation amounts, but news coverage of CEI operations has reported at least two occasions where Volkswagen of America made donations, directly or indirectly, to the CEI.

Rather than relying on incomplete donor lists and news reports, Plaintiff asks the Court to require the CEI to submit a complete list of its donors and donation amounts for the prior ten years to allow the parties to determine the level of financial involvement of Defendants in the CEI CCAF's activities.

TED FRANK AND THE CENTER FOR CLASS ACTION FAIRNESS

This Court is likely aware of Mr. Frank and the Center for Class Action Fairness ("CCAF") by virtue of their frequent objections in class actions. As such, Plaintiff will refrain from presenting a full

1 history of Mr. Frank and the CCAF.¹ However, it is of note that on October 1, 2015, the CCAF became
 2 part of the Competitive Enterprise Institute. (Motion at 1.) Following the absorption of the CCAF into
 3 the CEI, the CCAF is no longer an independent organization, and the relationship suggests it is
 4 financially supported by CEI and its donors.

5 THE COMPETITIVE ENTERPRISE INSTITUTE AND THE CCAF

6 The Competitive Enterprise Institute, of which Mr. Frank's CCAF is now a part, describes itself
 7 as "a non-profit public policy organization dedicated to advancing the principles of limited government,
 8 free enterprise, and individual liberty." (*About, COMPETITIVE ENTERPRISE INSTITUTE*,
 9 <https://cei.org/about-cei> (last visited Jan. 4, 2016).) Among areas of advocacy, the "CEI questions
 10 global warming alarmism...and opposes energy-rationing policies, including...EPA regulation of
 11 greenhouse gas emissions." (*Energy and the Environment, COMPETITIVE ENTERPRISE INSTITUTE*,
 12 <https://cei.org/issues/energy-and-environment> (last visited Jan. 4, 2016).)

13 As noted above, although the CEI does not publicly release its complete donor list, both
 14 Volkswagen Group of America and the Alliance of Automobile Manufacturers² were listed as donors
 15 to CEI as recently as June 2013. (Juliet Eilperin, *Anatomy of a Washington dinner: Who funds the*
 16 *Competitive Enterprise Institute?*, THE WASHINGTON POST (June 20, 2013),
 17 [https://www.washingtonpost.com/news/the-fix/wp/2013/06/20/anatomy-of-a-washington-dinner-who-](https://www.washingtonpost.com/news/the-fix/wp/2013/06/20/anatomy-of-a-washington-dinner-who-funds-the-competitive-enterprise-institute/)
 18 [funds-the-competitive-enterprise-institute/](https://www.washingtonpost.com/news/the-fix/wp/2013/06/20/anatomy-of-a-washington-dinner-who-funds-the-competitive-enterprise-institute/).) The Alliance of Automobile Manufacturers was listed a
 19 one of the "most generous sponsors" of the CEI's 2005 annual dinner. (Joel Achenbach, *The Tempest*,
 20 THE WASHINGTON POST (May 28, 2006), [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2006/05/23/AR2006052301305_4.html)
 21 [dyn/content/article/2006/05/23/AR2006052301305_4.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/05/23/AR2006052301305_4.html).) These donations mandate that a full
 22 disclosure of all CEI donors.

23 CONCLUSION

24 Plaintiff asks this Court to refrain from considering the Motion and proposed brief until such
 25 time as sufficient information has been provided to ensure transparency. This will allow the Court and
 26

27 ¹ For more information on Mr. Frank's filings, the Court is invited to review the profile for Mr. Frank
 28 in the Serial Objector Database, at: www.serialobjector.com/persons/67.

² Volkswagen Group of America is listed as a member of the Alliance of Automobile Manufacturers on
 the organization's website: <http://www.autoalliance.org/members>.

By: /s/ Robert S. Arns

Attorneys for Plaintiff Jonathan Jaffe,
Individually, and on behalf of all others
similarly situated.